

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
(Small Business Administration)

Plaintiff

v.

JOHN DOE AND RICHARD ROE AS those
unknown persons who may be the
holders of he lost mortgage note
or have any interest in this
proceeding

Defendants

CIVIL NO. 12-cv-01052-GAG

ACTION FOR CANCELLATION OF
LOST NOTE
(FRANCISCO BAEZ IRIZARRY)

JUDGMENT BY DEFAULT

WHEREAS, the defendants were duly served by publication pursuant to order of this court and notice published in the newspaper on April 25, and May 2, 9, 16, 23 and 30, 2012 per the verified statement filed with the Clerk of this Court;

WHEREAS, the requirements of Rule 4 of the Rules of Civil Procedure of Puerto Rico and Article 82 of the Mortgage Law has been met (P.R. Laws Tit 30 section 156);

WHEREAS, according to 28 U.S.C. section 1655, the defendants were ordered to appear and answer the Complaint and it appearing to the Court that none of the defendants have appeared or answered the Complaint, after due deliberation and consideration, the Court makes the following:

FINDINGS OF FACTS

1. On or before October 30, 1991, Francisco Báez Irizarry and

Virginia Acevedo, received from the United States of America, acting through the United States Small Business Administration a loan in the amount of \$24,000.00 on the property described at paragraph 3 below.

2. In evidence of the money lent by the plaintiff, United States of America, Francisco Báez Irizarry and Virginia Acevedo executed a promissory note dated October 30, 1991, in the amount of \$24,000.00 at 9 1/8% interest rate, payable to the order of Small Business Administration.

3. To secure the payment of said promissory note, Francisco Báez Irizarry and Virginia Acevedo executed a Mortgage in favor of the plaintiff, United States of America, on October 30, 1991, by Mortgage Deed No. 28 before Notary Public Graciela M. Gatell, over the following property, described in the Spanish language as:

RUSTICA: Predio de terreno radicado en el Barrio Capaez término municipal de Adjuntas, Puerto Rico, con una cabida de 12.00 cuerdas, equivalentes a 4 hectáreas, 71 áreas y 64 centiáreas, colinda por el saliente con Pascual Santiago; por el poniente y Sur, con el resto de la finca de la que se segrega; por el Norte, con terrenos de la Sucesión Manuel Allongo.

4. The aforementioned Mortgage Deed executed in favor of the plaintiff was duly recorded in the Registry of Property of Utuado, at page 240 overleaf of volume 110 of Adjuntas, property number 4073, sixth inscription, which is in full force and effect. Plaintiff is the lawful owner of the note described

hereinabove.

5. The original promissory note of \$24,000.00 dated October 30, 1991, while in possession of and under the custody of Small Business Administration, was lost, misplaced or destroyed.
6. The indebtedness to the plaintiff, United States of America has been paid in full.

CONCLUSIONS OF LAW

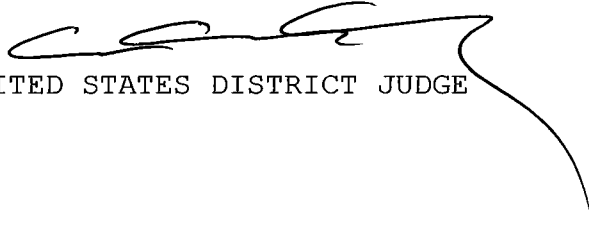
Articles 132 and 134 of the Mortgage Law of 1979, provides that when a mortgage note has been lost, the mortgage may be canceled by the Registrar of Property only by judicial decree obtained by a court of competent jurisdiction in a civil proceeding such as authorized by the Code of Civil Procedure of Puerto Rico, in which the court decrees that the mortgage obligation is extinguished. (P.R Laws Tit. 30 sections 2456 and 2458).

WHEREFORE IT IS ORDERED THAT:

- (1) Judgment be entered against the defendants herein declaring that the aforementioned mortgage obligation is extinguished.
- (2) The promissory note in the amount of \$24,000.00 of principal with interest rate of 9 1/8% per annum, on the unpaid balance executed by Francisco Báez Irizarry and Virginia Acevedo on October 30, 1991, the possession of whomsoever it may now be or become in the future, is hereby declared null and void, and therefore canceled.
- (3) The Registrar of the Property of Utuado, Puerto Rico, cancel

and nullify the real estate voluntary mortgage executed by Francisco Báez Irizarry and Virginia Acevedo, to secure the payment of the promissory note above described by the terms of Voluntary Mortgage Deed No. 28 executed before Notary Public Graciela M. Gatell, on October 30, 1991, recorded in the Registry of Property of Utuado, at page 240 overleaf, volume 110 of Adjuntas, property number 4073.

In San Juan, Puerto Rico, this 27th day of June, 2012.



UNITED STATES DISTRICT JUDGE